

VIA CERTIFIED MAIL

December 3, 2013

Gardena Hauling
Attn: Managing Agent
14905 South San Pedro Street
Gardena, CA 90248

Republic Services, Inc.
18500 North Allied Way
Phoenix, AZ 85054

Allied Waste Services of North America, LLC
18500 N. Allied Way
Phoenix, AZ 85054

Consolidated Disposal Service, LLC
18500 N. Allied Way
Phoenix, AZ 85054

Re: Notice of Violation and Intent to File Suit under the Federal Water Pollution Control Act

To Whom It May Concern:

I am writing on behalf of Los Angeles Waterkeeper ("Waterkeeper") regarding violations of the Clean Water Act¹ and California's General Industrial Storm Water Permit ("Storm Water Permit")² occurring at the Gardena Hauling facility located at 14905 South San Pedro Street Gardena, CA 90248 ("Gardena Hauling Facility" or "Facility"). The purpose of this letter is to put the owners and/or operators of the Gardena Hauling Facility³ on notice of the violations of the Storm Water Permit occurring at the Facility, including, but not limited to, violations caused by discharges of polluted storm water from the Facility into local surface waters and the failure to comply with the substantive and procedural requirements of the Storm Water Permit. Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, the Gardena Hauling Facility owners and/or operators are liable for violations of the Storm Water Permit and the Clean Water Act.

Waterkeeper has obtained documents and information relating to the Gardena Hauling Facility via Public Records Act requests, including documents submitted by the Gardena Hauling Facility owners and/or operators to the Los Angeles Regional Water Quality Control Board ("Regional Board"). Waterkeeper has also visually observed the industrial activities at the Gardena Hauling Facility. The violations of the Storm Water Permit and the Clean Water Act at the Gardena Hauling Facility described herein are based on Waterkeeper's review of the Regional Board documents and information, as well as Waterkeeper's observations.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. Notice must be given to the

¹ Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

² National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ.

³ The Gardena Hauling Facility's owners and/or operators are described in detail in Section I.B below.

alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution control agency in the state in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1).

By this letter issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act, (hereinafter "Notice Letter"), Waterkeeper puts the Gardena Hauling Facility owners and/or operators on notice that after the expiration of sixty (60) days from the date of this Notice Letter, Waterkeeper intends to file an enforcement action in federal court against them for violations of the Storm Water Permit and the Clean Water Act.

I. Background

A. Los Angeles Waterkeeper

Waterkeeper is a non-profit 501(c)(3) public benefit corporation organized under the laws of California with its main office at 120 Broadway, Suite 105, Santa Monica, California 90401. Founded in 1993, Waterkeeper has approximately 3,000 members who live and/or recreate in and around the Los Angeles area. Waterkeeper is dedicated to the preservation, protection, and defense of the rivers, creeks, and coastal waters of Los Angeles County from all sources of pollution and degradation. To further this mission, Waterkeeper actively seeks federal and state implementation of the Clean Water Act. Where necessary, Waterkeeper directly initiates enforcement actions on behalf of itself and its members.

Members of Waterkeeper reside in Los Angeles County, near the Dominguez Channel and the Los Angeles/Long Beach Harbor. As explained in detail below, the owners and/or operators of the Gardena Hauling Facility have continuously discharged pollutants into the Dominguez Channel, which flows into the Dominguez Channel Estuary, Los Angeles Harbor, Los Angeles/Long Beach Harbor, San Pedro Bay, Cabrillo Beach, and the Pacific Ocean (collectively "Receiving Waters"), in violation of the Clean Water Act and the Storm Water Permit. Waterkeeper members use the Receiving Waters for boating, kayaking, and swimming. Waterkeeper members also use the path alongside the Dominguez Channel to bird watch, view wildlife, hike, bike, walk, and run. Furthermore, Waterkeeper members engage in scientific study through pollution and habitat monitoring and restoration activities conducted by Waterkeeper's Marine Program in these waters. The unlawful discharge of pollutants from the Gardena Hauling Facility into the Receiving Waters impairs Waterkeeper members' use and enjoyment of these waters. Thus, the interests of Waterkeeper's members have been, are being, and will continue to be adversely affected by the Gardena Hauling Facility owner(s)' and/or operator(s)' failure to comply with the Clean Water Act and the Storm Water Permit.

B. The Gardena Hauling Facility Owners and/or Operators

Information available to Waterkeeper indicates that the Gardena Hauling Facility is owned and/or operated by the following companies: Republic Services, Inc. and Allied Waste Services of North America, LLC. Waterkeeper refers to Republic Services, Inc. and Allied

Waste Services of North America, LLC collectively as the "Gardena Hauling Facility Owners and/or Operators." Information available to Waterkeeper, including the Facility's SWPPP, indicates that Republic Services, Inc. merged with Allied Waste Services of North America, LLC in 2009. As explained herein, the Gardena Hauling Facility Owners and/or Operators are liable for violations of the Storm Water Permit and the Clean Water Act.

Republic Services, Inc. is primarily a municipal solid waste ("MSW") management company. Information available to Waterkeeper indicates that Republic Services, Inc. is an active corporation registered in California. Information available to Waterkeeper indicates that Allied Waste Services of North America, LLC is an active limited liability company registered in California. The Registered Agent for Republic Services, Inc. and Allied Waste Services of North America, LLC is C T Corporation System, 818 West Seventh Street, Los Angeles, California 90017.

C. The Gardena Hauling Facility's Permit Coverage

Prior to beginning industrial operations, dischargers are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent ("NOI") to the State Water Resources Control Board ("State Board") to obtain Storm Water Permit coverage. *See* Storm Water Permit, Finding #3. The State Board approved the NOI for the Gardena Hauling Facility on April 10, 1992. The receipt letter for the NOI identifies the facility operator name as "Allied Waste Services of North America LLC." The receipt letter identifies the facility name and address as "Allied Waste Services of North America LLC, Gardena Hauling, 14905 S San Pedro Street, Gardena Hauling." The receipt letter lists the Waste Discharge Identification ("WDID") number for the Gardena Hauling Facility as 4-19I005353.

D. Gardena Hauling Facility Standard Industrial Classification Codes

The Storm Water Permit requires facility operators to submit "Facility Site Information" in the NOI. Storm Water Permit, Attachment 3 at 3. "Facility Site Information" must include the Standard Industrial Classification ("SIC") Codes identifying all of the industrial activities taking place at the facility. *Id.* The Gardena Hauling Facility's NOI lists its SIC Code as 4212 (Trucking Without Storage). Information available to Waterkeeper indicates that the Sun Valley Facility stores hazardous waste and materials so, to comply with the Storm Water Permit, its NOI should also add SIC Code 4953 (Hazardous Waste Treatment Storage or Disposal Facilities) as applicable to entire Facility. These SIC Codes are relevant to evaluating the Gardena Hauling Facility Owners' and/or Operators' compliance with the Permit's monitoring requirements, including sample collection, sample analysis, and assessment of potential pollutant sources, as well as compliance with the Storm Water Permit's Effluent Limitations and the mandate to implement measures meeting the best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT") standards required by the Clean Water Act and Storm Water Permit.

For facilities classified as SIC Code 4212, the Storm Water Permit requires permit

coverage for “vehicle maintenance shops, equipment cleaning operations, or airport deicing operations.” Storm Water Permit, Attachment 1. The Storm Water Permit regulates the portions of the facility which are used for “vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or other operations identified herein that are associated with industrial activity.” Storm Water Permit, Attachment 1; *see also* Storm Water Permit, Attachment 4 (stating that “storm water associated with industrial activity” includes storm water discharges from material handling activities and storage areas for material handling equipment). Waterkeeper puts the Gardena Facility Owners and/or Operators on notice that one or more of these regulated activities is conducted at locations throughout the entire Gardena Facility, and thus the entire Facility requires Storm Water Permit coverage. In addition, even if the regulated industrial activities are not occurring throughout the entire Facility at all times, under the Storm Water Permit’s definition of “storm water associated with industrial activities” and explanation of material handling activities, Waterkeeper puts the Gardena Facility Owners and/or Operators on notice that since no best management practices (“BMPs”) or other controls exist to separate the storm water flows from portions of the Facility where non-regulated activities may occur from storm water flows from the regulated industrial activities, storm water at the Facility commingles and thus, all storm water discharges from the Facility are regulated under the Storm Water Permit.

E. Storm Water Pollution and Receiving Waters

With every significant rainfall event, millions of gallons of polluted rainwater, originating from numerous Los Angeles industrial operations such as the Gardena Hauling Facility, pour into storm drains and Los Angeles area surface waters. The consensus among regulatory agencies and water quality experts is that storm water pollution accounts for more than half of the total pollution entering marine and river environments annually. According to the National Research Council’s “Report on Urban Storm Water,” storm water runoff is “a principal contributor to water quality impairment of waterbodies nationwide.”⁴ This discharge of pollutants from industrial facilities in storm water contributes to the impairment of downstream waters and aquatic dependent wildlife. A water body is impaired if it is unable to support its beneficial uses, as described below.

Discharges from truck maintenance and fueling facilities such as the Gardena Hauling Facility contain pollutants such as: oil and grease (“O&G”); total suspended solids (“TSS”); hydraulic fluid; antifreeze; used batteries; detergents and cleaners; diesel fuel; gasoline; lubricating fluids; organic solvents; recyclables; heavy metals such as copper, iron, lead, aluminum, and zinc; brake fluid; dirt, dust, and debris; pathogens (including bacteria); nutrients; chemical oxygen demand (“COD”); and trash. Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and developmental or reproductive harm. Discharges of polluted storm water and non-storm water to

⁴ National Research Council of the National Academies, “Urban Stormwater Management in the United States,” vii (2008).

the Receiving Waters via the storm drain system pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

The Regional Board issued the *Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura County* ("Basin Plan"). The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the waterbodies of the Dominguez Channel Watershed (including the Receiving Waters), which receive polluted storm water discharges from the Gardena Hauling Facility, include: water contact recreation ("REC 1"), non-contact water recreation ("REC 2"), commercial and sport fishing ("COMM"), wildlife habitat ("WILD"), estuarine habitat ("EST"), rare, threatened, or endangered ("RARE"), migration of aquatic organisms ("MIGR"), spawning, reproduction and/or early development ("SPWN"), and marine habitat ("MAR"). See Basin Plan, Table 2-1. According to the 2010 303(d) List of Impaired Water Bodies, the Dominguez Channel is impaired by toxicity, ammonia, copper, diazinon, indicator bacteria, lead, and zinc.⁵ The Dominguez Channel Estuary is impaired by ammonia, chlordane, chrysene, coliform bacteria, lead, sediment toxicity, and zinc. Further, the Los Angeles Harbor is impaired by cadmium, chlordane, chromium, copper, lead, mercury, sediment toxicity, zinc, and indicator bacteria. The Los Angeles/Long Beach Harbor is impaired by chrysene, copper, sediment toxicity, and zinc. The San Pedro Bay is impaired by chlordane and sediment toxicity, and one of the San Pedro Bay beaches, Cabrillo Beach, is impaired by indicator bacteria. Polluted discharges from the Gardena Hauling Facility cause and/or contribute to the degradation of the already impaired surface waters and beaches identified above. For the Los Angeles area aquatic ecosystem to regain its health, contaminated storm water discharges, including those from the Gardena Hauling Facility, must be eliminated.

The Receiving Waters are ecologically sensitive areas. Although pollution and habitat destruction have drastically altered the natural ecosystem, the Receiving Waters are still essential habitat for dozens of fish and bird species, as well as macro-invertebrate and invertebrate species. Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special aesthetic and recreational significance that the Receiving Waters have for people in the surrounding communities. The public's use of the Receiving Waters for water contact sports and fishing exposes many people to toxic metals, pathogens and bacteria, and other contaminants in storm water and non-storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving Waters.

II. The Gardena Hauling Facility and Associated Discharges of Pollutants

A. Gardena Hauling Facility Site Description

Information available to Waterkeeper indicates that the Gardena Hauling Facility is located on South San Pedro Street and borders existing industrial facilities to the north, west, and

⁵ 2010 Integrated Report – All Assessed Waters, available at: http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml (last accessed on November 15, 2013).

partially to the south. The Facility has two entrances/exits: one from West Compton Boulevard on the south and one from South San Pedro Street on the east. The property is approximately 9.28 acres and approximately 90% of the Facility is impervious.

Information available to Waterkeeper indicates that the Gardena Hauling Facility is in the shape of a T. The southern portion of the facility includes marked spaces for employee parking and truck parking and has a clarifier. The western portion of the facility also has marked spaces for parking and includes a fuel dispensing island with dispensers for unleaded gasoline, and diesel. The western portion of the facility is also used for equipment, roll off, and container storage. The eastern portion of the facility includes a two-story office building, and a large metal building containing vehicle and equipment maintenance bays, maintenance materials storage, employee facilities and a training room. There is also a one-story office building east of the maintenance building, adjacent to San Pedro Street. There is additional employee parking south of the office buildings. In the center of the T shape of the facility, there is a Container Shop with an adjacent sump containing a three-stage clarifier, and a painting booth to the south. The facility also has two underground storage tanks east of the fuel island storing unleaded fuel and diesel.

The Facility's generated waste includes used or waste motor oil, gear oil, hydraulic oil, brake fluid, antifreeze, oil filters, batteries, soiled rags and absorbent materials. The Facility stores diesel (2, 12,000 gallon underground storage tanks), gasoline (10,000 gallon underground storage tank), glass cleaner, transmission fluid, motor oil, hydraulic oil, used oil, coolant, used coolant, aqueous degreaser, used batteries and e-waste. Information available to Waterkeeper indicates that uncovered bins for recycling and/or disposal materials are stored uncovered throughout the Facility.

B. Gardena Hauling Facility Industrial Activities and Pollutant Sources

Information available to Waterkeeper indicates that the Gardena Hauling Facility is used to park, fuel, and maintain trucks used for Republic Services, Inc.'s solid waste recycling and transfer activities at its other facilities. The industrial activities at the Gardena Hauling Facility are pollutant sources and include truck parking, truck and bin maintenance, vehicle re-fueling, equipment and bin storage, equipment, bin, and truck cleaning, bin painting, hazardous waste storage.

Additional pollutant sources include the diesel and gasoline refueling areas, where spillage of fuel can occur during filling activities, and employee and truck parking areas, where vehicles can drip coolant, and other fluids. Information available to Waterkeeper indicates that the outside materials storage area is an additional pollutant source, as containers may leach food waste residue or other fluid and equipment may drip oil or other fluid.

Information available to Waterkeeper indicates that some wastewater at the Facility is discharged into the sanitary sewer system. This includes water from truck washing at the site, which discharges into a clarifier for treatment before it is discharged in the sanitary sewer system. There is an additional clarifier in the southern parking lot on the east side.

C. Gardena Hauling Facility Pollutants

Information available to Waterkeeper, including the Facility's own storm water samples, indicates that the pollutants associated with operations at the Gardena Hauling Facility include, but are not limited to: O&G; TSS; hydraulic fluids; antifreeze; used batteries; detergents and cleaners; diesel; gasoline; lubricating fluids; organic solvents; recyclables; heavy metals such as copper, iron, lead, aluminum, and zinc; brake fluid; pathogens (including bacteria); nutrients; COD; MSW/trash; pesticides; paint; pH-affecting substances; fugitive and other dust, dirt, and debris; and fuel and fuel additives. The Gardena Hauling Facility Owners' and/or Operators' failure to develop and/or implement required best management practices ("BMPs") results in the exposure of these pollutants associated with the Facility's industrial activities to rainfall, which then discharges into the Receiving Waters, in violation of the Storm Water Permit and the Clean Water Act.

Hazardous wastes are generated at the Gardena Hauling Facility, including used oil from equipment maintenance and sludge from site clarifiers. Hazardous waste is stored in a drum in the Transfer Station building before it is removed from the site and taken to recycling/disposal facilities.

D. Gardena Hauling Facility Discharge Points

Information available to Waterkeeper indicates that storm water discharges from at least two (2) discharge points at the Gardena Hauling Facility. These include a discharge point on San Pedro Street and one on Compton Boulevard. Storm water flows generally as sheet flow from the northeast portion of the site to San Pedro Street and from the west and south to Compton Boulevard. Information available to Waterkeeper indicates that discharges from these two points at the Facility flow to municipal storm sewer drains, which then discharge into the Los Angeles area storm drain system and flows into Dominguez Channel. The Gardena Hauling Facility Owners and/or Operators collect storm water samples at these two discharge locations.

III. Violations of the Clean Water Act and the Storm Water Permit

A. Discharges of Polluted Storm Water from the Gardena Hauling Facility in Violation of Effluent Limitation B(3) of the Storm Water Permit

Effluent Limitation B(3) of the Storm Water Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve BAT for toxic pollutants⁶ and BCT for conventional pollutants.⁷ EPA Benchmarks are objective standards for evaluating whether a permittee's

⁶ Toxic pollutants include heavy metals, such as copper, lead, and zinc. *See* 40 C.F.R. § 401.15.

⁷ Conventional pollutants include biochemical oxygen demand, TSS, O&G, pH, and fecal coliform. *See* 40 C.F.R. § 401.16.

BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation B(3) of the Storm Water Permit.⁸

Pursuant to the GISWP, the Gardena Hauling Facility Owners and/or Operators are required to collect and analyze storm water samples during all Wet Seasons. The laboratory results from the Gardena Hauling Facility Owners' and/or Operators' sampling demonstrate that discharges from the Facility contain concentrations of pollutants significantly exceeding EPA Benchmarks. The table below sets forth the results of sampling conducted by the Gardena Hauling Facility Owners and/or Operators when the sample result exceeds an EPA Benchmark.

Sampling Conducted by the Gardena Hauling Facility Owners and/or Operators Demonstrating Benchmark Exceedances⁹					
Date of Sample	Sample Location	Constituent	EPA Benchmark ¹⁰	Sample Value	Magnitude of Exceedance ¹¹
10/19/2010	San Pedro Gate	TSS	100	121	1.21
10/19/2010	Compton Gate	SC	200	640	3.2
11/04/2011	Compton Gate	SC	200	240	1.2
11/04/2011	San Pedro Gate	TSS	100	217	2.17
11/04/2011	Compton Gate	TSS	100	127	1.27
02/08/2013	Compton Gate	SC	200	290	1.45

Information available to Waterkeeper, including sampling data exhibiting consistent exceedances of EPA Benchmarks, demonstrates that the Gardena Hauling Facility Owners and/or Operators have failed and continue to fail to develop and/or implement BMPs at the Gardena Hauling Facility that achieve compliance with the BAT/BCT standards.

Waterkeeper puts the Gardena Hauling Facility Owners and/or Operators on notice that they violate Effluent Limitation B(3) of the Storm Water Permit every time they discharge storm water from the Gardena Hauling Facility without BMPs that achieve BAT/BCT. *See, e.g.*, Exhibit A (setting forth dates). These discharge violations are ongoing and will continue every time the Gardena Hauling Facility Owners and/or Operators discharge polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT

⁸ See *United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP)*, as modified effective May 27, 2009 ("Multi-Sector Permit").

⁹ The Gardena Hauling Facility Owners and/or Operators collected all samples listed in the table in this Notice Letter.

¹⁰ EPA Benchmark Values for all constituents in the table in this Notice Letter are measured in units of mg/L, except specific conductance ("SC"), which is measured in umhos/cm.

¹¹ The magnitudes of exceedance values in this table were calculated by taking the Sample Value and dividing it by the EPA Benchmark. For example, the first TSS sample value (taken on 10/19/2010) of 120 divided by 100 (EPA Benchmark for TSS) equals 1.2. Thus the sample taken on 10/19/2010 is 1.2 times the EPA Benchmark for TSS.

standards. Waterkeeper will update the dates of violations when additional information and data become available. Each time the Gardena Hauling Facility Owners and/or Operators discharge polluted storm water in violation of Effluent Limitation B(3) of the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Gardena Hauling Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since December 3, 2008.

B. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan for the Gardena Hauling Facility in Violation of Section A and Provision E(2) of the Storm Water Permit

Section A(1) and Provision E(2) of the Storm Water Permit require dischargers to have developed and implemented a SWPPP prior to beginning industrial activities that meets all of the requirements of the Storm Water Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Gardena Hauling Facility, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. Storm Water Permit, Section A(2). These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations. To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9) and revised as necessary. *See* Storm Water Permit, Sections A(9) and A(10).

Sections A(3) – A(10) of the Storm Water Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system(s), structural control measures, areas of actual and potential pollutant contact, and areas of industrial activity (*see* Section A(4)); a list of significant materials handled and stored at the site (*see* Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities; a description of significant spills and leaks; a list of all non-storm water discharges and their sources; and a description of locations where soil erosion may occur (*see* Section A(6)). Sections A(7) and A(8) require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

Information available to Waterkeeper indicates that the Gardena Hauling Facility Owners and/or Operators have been conducting and continue to conduct industrial operations at the Gardena Hauling Facility with an inadequately developed, implemented, and/or revised SWPPP. Although the Facility's SWPPP appears to be facially adequate, it does not achieve the Storm Water Permit's objective for the SWPPP, which is "to identify and implement site-specific [BMPs] to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges." Storm Water Permit, Section A(2). The

high pollutant concentrations in the Facility's storm water samples since at least December 3, 2008 demonstrate the failure of the Facility's BMPs to reduce or prevent pollutants associated with industrial activities in discharges, and thus the BMPs in the Facility's SWPPP are improperly developed and/or implemented. Therefore, the Facility's SWPPP continues to include inadequate BMPs and thus is in violation of the Storm Water Permit. *See* Storm Water Permit, Sections A(8) and A(9).

Waterkeeper puts the Gardena Hauling Facility Owners and/or Operators on notice that they violate Section A and Provision E(2) of the Storm Water Permit and the Clean Water Act every day that they operate the Gardena Hauling Facility with an inadequately developed, implemented, and/or revised SWPPP. The Gardena Hauling Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's SWPPP requirements since at least December 3, 2008. These violations are ongoing, and Waterkeeper will include additional violations as information and data become available. The Gardena Hauling Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since December 3, 2008.

C. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Gardena Hauling Facility in Violation of Sections B and E(3) of the Storm Water Permit

Section B(1) and Provision E(3) of the Storm Water Permit require facility operators to develop and implement an adequate Monitoring and Reporting Program ("M&RP") when industrial activities begin at a facility, that meets all of the requirements of the Storm Water Permit. An adequate M&RP therefore ensures that BMPs are effectively reducing and/or eliminating pollutants at the facility, and must be evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *See id.*

Sections B(3) – B(16) of the Storm Water Permit set forth the M&RP requirements. Specifically, Section B(3) requires dischargers to conduct quarterly visual observations of all drainage areas within their facility for the presence of authorized and unauthorized non-storm water discharges. Section B(4) requires dischargers to conduct visual observations of storm water discharges during the first hour of discharge of at least one storm event per month during the Wet Season at each discharge point. Sections B(3) and B(4) further require dischargers to document the presence of any floating or suspended material, O&G, discolorations, turbidity, odor, and the source of any pollutants. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. Storm Water Permit, Sections B(3) and B(4).

The Storm Water Permit requires facility operators to collect storm water samples during the first hour of discharge from the first storm event of the wet season and at least one other storm event in the wet season. Storm Water Permit, Sections B(5)(a) and B(7). A sample must be collected from each discharge point at the facility. A qualifying storm event that triggers the

requirement to sample is one that occurs during facility operating hours and is preceded by at least three working days without storm water discharge. Storm Water Permit, Section B(5)(b). Storm water samples must be analyzed for TSS, pH, SC, and total organic carbon ("TOC") or O&G. Storm Water Permit, Section B(5)(c)(i). Facilities must also analyze their storm water samples for "toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Storm Water Permit, Section B(5)(c)(ii).

The Gardena Hauling Owners and/or Operators, however, did not collect the required storm water discharge samples. The explanation often provided by the Gardena Hauling Owners and/or Operators for their failure to sample was that there were no qualifying storm events (as defined in the General Permit) or that there was only a single qualifying storm event during the monitoring season. Information available to Waterkeeper, however, indicates that during each of these monitoring seasons, numerous qualifying storm events occurred. *See Exhibit B.*¹² For example, during the 2009-2010 monitoring season, the Gardena Hauling Owners and/or operators failed to sample despite at least three qualifying events. During the 2010-2011 monitoring season and the 2011-2012 monitoring season, Gardena Hauling Owners and/or operators only conducted sampling once despite at least two qualifying events. Finally, in the 2012-2013 monitoring season, the Gardena Hauling Owners and/or operators failed to conduct sampling during the first qualifying storm event and failed to sample during more than one storm, despite at least three qualifying events. Thus, the Gardena Hauling Owners and/or Operators' failure to sample during the first qualifying storm event and from at least one of these other qualifying storm events violates Section B(5) of the Storm Water Permit.

Information available to Waterkeeper indicates that the Gardena Hauling Facility Owners and/or Operators have been conducting operations at the Gardena Hauling Facility with an inadequately developed, implemented, and/or revised M&RP. Importantly, the Gardena Hauling facility owners and/or operators have not analyzed samples for all required parameters. Facilities classified as SIC Code 4953 must analyze their storm water samples for ammonia, magnesium, COD, arsenic, cadmium, cyanide, lead, mercury, selenium, and silver. *See Storm Water Permit, Section B(c)(iii), Table D (Sector K).* Information available to Waterkeeper indicates that hazardous wastes are generated and stored at the Gardena Facility. However, the Gardena Facility Owners and/or Operators have never analyzed their storm water samples for additional parameters required by Table D for SIC Code 4953 facilities, in violation of section B(5)(c) of the Storm Water Permit.

In addition, as discussed in detail in Sections I.E and II.B and C above, both pathogens (including indicator bacteria) and trash are likely present in the Facility's discharges in significant quantities. The Gardena Hauling Facility Owners and/or Operators are required to analyze all storm water samples for these parameters, and others that are likely to be present in the Facility's storm water discharges in significant quantities (including those found in Table D

¹² Attached as Exhibit B is a table that sets forth qualifying rain events that have occurred at the Facility in the past five (5) years. Exhibit B was created using daily and hourly rain data collected from the 291- Los Angeles 96th St. rain gauge by Los Angeles County Department of Public Works.

for SIC Code 4953 facilities). However, the Gardena Hauling Facility Owners and/or Operators have failed to sample for the required parameters, and their Annual Reports also do not include an explanation for this failure. *See* Storm Water Permit, Section B(14).

Moreover, the Gardena Hauling Facility Owners and/or Operators have failed to comply with the Storm Water Permit's visual observation requirements. For example, Gardena Hauling Facility Owners and/or Operators have failed to record the hours of observation for authorized discharges, thus failing to demonstrate that discharges were observed during daylight hours and during scheduled facility operating hours. *See* Storm Water Permit, Sections B(3)(c). In addition, even though the Gardena Hauling Facility Owners and/or operators observed pollutants during monthly visual monitoring, they have failed to record new BMPs or corrective actions taken, often stating either nothing or that no new BMPs were needed.

Although the Gardena Hauling Facility Owners and/or Operators have generally filled out the required forms to document their compliance with the M&RP for the Facility, the high pollutant concentrations in the Facility's storm water discharges demonstrate that the Gardena Hauling Facility Owners and/or Operators have not developed and/or implemented an adequate M&RP. The objectives of the M&RP include "[ensuring] that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations" and that "practices at the facility to reduce or prevent pollutants in storm water discharges . . . are evaluated and revised." Storm Water Permit, Section B(2). However, the Gardena Hauling Facility Owners' and/or Operators' repeated violations of Effluent Limitation B(3) and high pollutant concentrations in the Facility's storm water discharges indicate that the M&RP does not achieve these objectives and therefore is not adequate.

Waterkeeper puts the Gardena Hauling Facility Owners and/or Operators on notice that they violate Section B and Provision E(3) of the Storm Water Permit and the Clean Water Act every day that they fail to develop, implement, and/or revise an adequate M&RP. The Gardena Hauling Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's M&RP requirements every day since at least December 3, 2008. These violations are ongoing, and Waterkeeper will include additional violations as information and data become available. The Gardena Hauling Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since December 3, 2008.

E. Failure to Comply with the Storm Water Permit's Reporting Requirements

Section B(14) of the Storm Water Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. The Storm Water Permit, in relevant part, requires that the Annual Report include the following: 1) a summary of visual observations and sampling results; 2) an evaluation of the visual observation and sampling and analysis results; 3) laboratory reports; and 4) an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). Storm Water Permit, Section B(14). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate and whether SWPPP revisions are needed. *See* Storm Water Permit, Section A(9). The Annual Report must be signed and certified by a duly authorized representative, under penalty of

law that the information submitted is true, accurate, and complete to the best of his/her knowledge. *See* Storm Water Permit, Section B(14), C(9), and C(10).

Information available to Waterkeeper indicates that the Gardena Hauling Facility Owners and/or Operators have failed to comply with Section B(14) of the Storm Water Permit. For example, none of the ACSCE Reports submitted for the Facility included the critical evaluations required to improve a facility's M&RP and SWPPP to ensure that Storm Water Permit violations, such as those discussed above, are corrected. *See* Storm Water Permit, Sections A(9) and B(14). On at least one occasion, the Gardena Hauling Facility Owners and/or Operators entirely failed to include an ACSCE Report. Failure to assess the Facility's M&RP and SWPPP negates a key component of the evaluation process required in self-monitoring programs such as the Storm Water Permit. Instead, each year the Gardena Hauling Facility Owners and/or Operators disregarded these failures to comply with the Storm Water Permit by simply checking the box in the Annual Report form indicating that they certified compliance with the Storm Water Permit. By providing erroneous information, the Gardena Hauling Facility Owners and/or Operators thereby ensured that violations of the Storm Water Permit would continue, as demonstrated by persistent EPA Benchmark exceedances, because no changes had been made to correct recurring issues. This in itself is a violation of the Storm Water Permit. *See* Storm Water Permit, Sections B(14).

Waterkeeper puts the Gardena Hauling Facility Owners and/or Operators on notice that its failures to report are violations of the Storm Water Permit, and indicate a continuous and ongoing failure to comply with the Storm Water Permit's reporting requirements, including those set forth at Section B(14). Every day the Gardena Hauling Facility Owners and/or Operators operate the Gardena Hauling Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Gardena Hauling Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least December 3, 2008. The Gardena Hauling Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since December 3, 2008.

IV. Relief Sought for Violations of the Clean Water Act

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of up to \$32,500 per day per violation for all Clean Water Act violations between March 15, 2004 and January 12, 2009, and \$37,500 per day per violation for all Clean Water Act violations after January 12, 2009. In addition to civil penalties, pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), Waterkeeper will seek injunctive relief preventing further violations of the Clean Water Act, declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Waterkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

V. Conclusion

Upon expiration of the 60-day notice period, Waterkeeper will file a citizen suit under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), for the above-referenced violations. Waterkeeper is represented by its own legal counsel and by Lawyers for Clean Water, Inc. During the 60-day notice period, Waterkeeper is willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately.

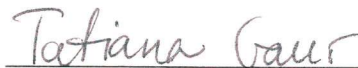
Please direct all communications to Los Angeles Waterkeeper:

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Sincerely,



Liz Crosson
Los Angeles Waterkeeper



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Los Angeles Waterkeeper Notice of Violations and Intent to File Suite—Exhibit A
Days with Significant Rain Events (Rainfall above 0.1 inches)
December 2008-May 2013
291-Los Angeles, 96th Street Rain Gauge

Date	Rainfall
12/15/2008	1.3
12/17/2008	0.47
12/22/2008	0.2
12/25/2008	0.24
1/23/2009	0.16
2/5/2009	0.51
2/6/2009	0.43
2/9/2009	0.24
2/13/2009	0.24
2/16/2009	1.06
2/17/2009	0.47
10/13/2009	0.39
10/14/2009	0.91
12/7/2009	0.71
12/11/2009	0.16
12/12/2009	0.91
1/17/2010	0.2
1/18/2010	0.71
1/19/2010	0.47
1/20/2010	1.34
1/21/2010	0.47
1/22/2010	0.51
1/26/2010	0.12
2/5/2010	0.67
2/6/2010	1.18
2/9/2010	0.43
2/27/2010	0.91
3/6/2010	0.2
4/5/2010	0.2
4/11/2010	0.35
4/12/2010	0.24
10/6/2010	0.27
10/19/2010	0.12
10/24/2010	0.12

Los Angeles Waterkeeper Notice of Violations and Intent to File Suite—Exhibit A
Days with Significant Rain Events (Rainfall above 0.1 inches)
December 2008-May 2013
291-Los Angeles, 96th Street Rain Gauge

10/25/2010	0.2
10/30/2010	0.35
11/8/2010	0.12
11/20/2010	0.24
11/21/2010	0.11
11/27/2010	0.12
12/5/2010	0.32
12/17/2010	0.31
12/18/2010	1.06
12/19/2010	2.64
12/20/2010	1.46
12/21/2010	0.94
12/22/2010	1.62
12/25/2010	0.51
12/26/2010	0.2
12/29/2010	0.63
1/2/2011	0.31
1/3/2011	0.16
2/16/2011	0.39
2/18/2011	0.39
2/19/2011	0.16
2/25/2011	0.67
2/26/2011	0.2
3/2/2011	0.16
3/20/2011	1.65
3/21/2011	0.27
3/23/2011	0.48
3/24/2011	0.15
3/25/2011	0.2
3/27/2011	0.12
5/17/2011	0.2
5/18/2011	0.15
10/5/2011	0.71
11/4/2011	0.19
11/6/2011	0.24
11/12/2011	0.2
11/20/2011	0.63

Los Angeles Waterkeeper Notice of Violations and Intent to File Suite—Exhibit A
Days with Significant Rain Events (Rainfall above 0.1 inches)
December 2008-May 2013
291-Los Angeles, 96th Street Rain Gauge

12/12/2011	0.75
1/21/2012	0.55
1/23/2012	0.52
3/17/2012	0.55
3/25/2012	0.74
4/10/2012	0.12
4/11/2012	0.43
4/13/2012	0.67
4/25/2012	0.28
4/26/2012	0.12
10/11/2012	0.35
11/17/2012	0.2
11/29/2012	0.11
11/30/2012	0.43
12/3/2012	0.27
12/18/2012	0.19
12/24/2012	0.62
12/26/2012	0.24
12/29/2012	0.27
1/24/2013	0.62
1/25/2013	0.12
1/26/2013	0.23
2/8/2013	0.28
2/19/2013	0.15
3/8/2013	0.43
5/6/2013	0.23

Qualifying Rain Events During Business Hours--Exhibit B
December 2008 - May 2013
(291-Los Angeles 96th St. Rain Gauge)

Date	Day of Week	Total Rainfall (in inches)
12/15/2008	Monday	0.91
12/22/2008	Monday	0.2
1/23/2009	Friday	0.16
2/5/2009	Thursday	0.28
2/13/2009	Friday	0.24
12/7/2009	Monday	0.72
1/18/2010	Monday	0.68
2/5/2010	Friday	0.4
3/21/2011	Monday	0.23
11/4/2011	Friday	0.16
12/12/2011	Monday	0.71
10/11/2012	Thursday	0.31
1/24/2013	Thursday	0.35
2/8/2013	Friday	0.28
5/6/2013	Monday	0.11

